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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)
)
Revision of the Commission's Part 64)
Requirements for the Filing of)
Cost Allocation Manuals by)
Certain Local Exchange Carriers)

RM -

8354

**PETITION FOR RULEMAKING
OF THE
UNITED STATES TELEPHONE ASSOCIATION**

The United States Telephone Association (USTA) respectfully submits this Petition for Rulemaking (Petition) regarding the scope of the Commission's requirements for the filing of cost allocation manuals (CAMs) with the Commission. Specifically, USTA requests that the Commission amend § 64.903(a) to reflect the limited diversification activities of a small group of carriers with CAM obligations, and to reflect changes as a result of its experience with CAMs in the industry over the past half decade, by increasing the threshold for the requirement that CAMs be filed to cover carriers who have annual operating revenues of \$1 billion or more. This would relieve from the specific requirement of CAM filings, updates and audits a small group of carriers that have been shown by experience to be outside the primary regulatory concerns sought to be achieved by the rule. A copy of the rule change proposed is attached as Attachment 1.

Under this proposal, there would be no other change in the scope of the rule except a change in the threshold, i.e., a carrier with annual operating revenues of over \$1 billion would have to be covered by a CAM on file at the Commission. It would track the framework in effect today. This change is targeted to address the uniquely burdensome CAM impacts that currently face four USTA members. The only exchange carriers who

would be immediately affected by this rulemaking are: Puerto Rico Telephone Company, Rochester Telephone Corporation Cincinnati Bell Telephone Company and Lincoln Telephone and Telegraph Company. It would not alter the arrangements that impact the largest carriers, and toward whom the Commission focuses its primary attention anyway.

When the Commission adopted its cost allocation rules in CC Docket No. 86-111, in 1987, CAMs were required of certain local exchange carriers with \$100 million or more in annual operating revenues. Separation of the Costs of Regulated Telephone Services from the Costs of Nonregulated Activities, Report and Order, 2 FCC Rcd 1298 (1987) (Common Cost Order), recon. 2 FCC Rcd 6283 (1987) (Common Cost Reconsideration Order), further recon. 3 FCC Rcd 6701 (1988) (Further Reconsideration Order), affirmed sub nom., Southwestern Bell Corp. v. FCC, 896 F.2d. 1378 (D.C.Cir.1990). In the Common Cost Order, the Commission recognized differences between the largest local exchange carriers (the Bell Operating Companies, specifically) and other local exchange carriers, in the handling of initial CAMs. See Common Cost Order, 2 FCC Rcd 1298, 1327-28 at ¶¶ 230-236.

Tier 1 carriers were first defined as such in a Public Notice that set forth the cost support materials required to be filed by certain carriers under Part 61, which materials were to accompany their 1985 annual access tariff filings. Public Notice, Commission Requirements for Cost Support Materials To Be Filed With Access Tariffs on March 1, 1985, No. 2133, released January 25, 1985. The Commission has subsequently used the Tier 1 classification for a number of other purposes. These purposes include continuing tariff review plan detail, depreciation reporting, expanded interconnection and procurement

reporting, among others. However, as noted above, the specific Part 64 rule governing CAMs itself is not expressly tied to Tier 1 carriers. In any event, this Petition does not seek either a change in the definition of a Tier 1 carrier, or a change in the application of any of the other Commission requirements to these carriers.

The language of the Part 64 rules that provides for the filing of CAMs is set out at 47 C.F.R. § 64.903(a). That section states a general requirement for the filing of a CAM, and outlines six items that must be included in each carrier's CAM. § 64.903(a)(1)-(6). This section of Part 64 also requires that carriers who file CAMs "update their manuals at least quarterly" and that they also file any changes to cost apportionment tables and descriptions of time reporting procedures they are making at least 60 days before implementation, with a statement quantifying the impact of each change on carrier accounts or cost pools, as appropriate. 47 C.F.R. § 64.903(b).

Currently, the number of exchange carrier organizations that file CAMs is 15. (Some of these organizations have more than one CAM on file.) Each of these entities is a member of USTA. AT&T also files a CAM. The specific requirement in 47 C.F.R. 64.903(a) that requires the filing of CAMs is parallel to but does not specifically state that it covers the group of carriers often characterized by the Commission as Tier 1 carriers. The Common Cost Order indicates that the Commission proposed the CAM requirement for Tier 1 carriers (2 FCC Rcd 1298, 1326 at ¶ 224) and intended essential congruence between the Tier 1 classification and § 64.903(a) (2 FCC Rcd 1298, 1304 at ¶ 47), but the rule itself addresses only the \$100 million threshold. See also 2 FCC Rcd 1298, 1300 at ¶ 4. Subsequent orders of the Commission have treated the rule as a rule covering Tier 1

carriers for all intent and purposes. See, e.g., Common Cost Reconsideration Order, 2 FCC Rcd 6283, 6300 at ¶ 157.

The discussion in the original Common Cost Order makes it apparent that, even though the Commission recognized the existence of some regulatory concerns for local exchange carriers that would not file CAMs, the differentiation it made for purposes of requiring CAMs was initially one primarily of carrier size. Common Cost Order, 2 FCC Rcd 1298, 1304 at ¶¶ 43-46. The questions posed related to what was "small" and what was not. As the Commission will see below, it would foster a better targeting of Commission resources at this time if it would reassess the universe of carriers now subject to § 64.903(a). The Commission should consider whether the extent of these carriers' current involvement in nonregulated activities, more than six years after the institution of the Part 64 rules, still requires the detail of a CAM, with the accompanying burdens of updates and audits, and whether the Commission's own resources can be better applied by eliminating the CAM filing requirement for these medium-sized carriers.

The core purpose of the Part 64 rulemaking proceeding was to "ensure that the costs of nonregulated activities are separated from the costs of providing regulated services in a manner that ensures that ratepayers share in the efficiencies generated from joint use of the network." Common Cost Reconsideration Order, 2 FCC Rcd 6283, 6300 at ¶ 154. USTA submits that the small amount of nonregulated activities by the carriers affected by this Petition allows the Commission to evaluate any risk of misallocation or cost shifting and to address it without a CAM requirement. With a change, the Commission can

encourage a more beneficial redirection of carrier resources that will deliver customers more for the dollars they pay.

USTA does not seek change in the applicability of the fundamental cost allocation principles set out in Part 64. Whether or not a carrier files a CAM, it is still required to comply with general rules governing the separation and allocation of costs. Common Cost Order, 2 FCC Rcd 1298, 1304 at ¶ 47; Common Cost Reconsideration Order, 2 FCC Rcd 6283, 6299 at ¶ 143. These general rules are set out in § 64.901 of the Commission's Rules. These rules use attributable costs in defining an allocation process, requiring that carriers assign costs first according to any tariffed charge so that it will be clear that tariffed services will be available on a fair and nondiscriminatory basis to users of those services whether the users are affiliated or not affiliated with the carrier. If an activity is not tariffed, costs are directly assigned to activities whenever possible, and then remaining costs are sought to be allocated on the basis of indirect, but still cost-causative linkages. Costs that are residual in nature are allocated on the basis of a general allocator. See Common Cost Reconsideration Order, 2 FCC Rcd 6283, 6284-85 at ¶ 10 and 15. These principles have received general acceptance in the industry for use within Part 64, and there has been no recent contest about the validity of or usefulness to the Commission of the general cost allocation principles set out in § 64.901(b)(1)-(3).

These general rules provide the primary industrywide control over regulated cost allocation practices of carriers (and others.) Each carrier with a CAM and each carrier without a CAM is required to adhere to § 64.901 requirements. Common Cost Order, 2 FCC Rcd 1298, 1304 at ¶ 47. Thus, whether or not a carrier has a CAM on file at the

Commission, it is expected to align its activities with the general cost allocation principles set out in Part 64.

The exchange carriers covered by the Part 64 CAM requirements have filed their CAMs or CAM updates each quarter since September 1, 1987. See Common Cost Order, 2 FCC Rcd 1298, 1327 at ¶ 232. At each point that a CAM or CAM update is filed, the Commission has placed it on Public Notice, and has taken comment from the public. This process has resulted in many Public Notices since the first filings in September, 1987. With respect to the companies impacted here, there were at least 3 Public Notices issued on a CAM of one or more of them in 1987 (September 1, and two Public Notices on September 14), 2 in 1988 (October 26, and December 14), 7 in 1989 (January 31, March 6, May 12, May 31, July 13, October 12 and November 14), 8 in 1990 (January 17, March 15, April 17, May 22, July 24, October 11, October 31 and November 13), 6 in 1991 (January 25, February 7, April 22, July 17, October 16 and November 27), 4 in 1992 (January 14, April 24, July 17 and October 13) and 5 to date in 1993 (January 13, April 16, July 21, August 23 and September 7.) This translates into 68 actual opportunities for comment on one of these carriers' CAMs. With respect to these four carriers, these Public Notices have resulted in little comment. Indeed, USTA believes that no comments have been filed on the CAM revisions of any of these carriers since 1987. It is apparent that none of the revisions has posed any significant regulatory questions.

The rationale of the Commission's CAM requirement is set out in its Common Cost Order. The primary focus of the Commission's regulatory oversight has been on a carrier's use of assets and employees for both regulated and nonregulated activities. As a secondary

matter, the Commission also has used CAMs to remain aware of the various nonregulated activities that carriers and their affiliates engage in, the level of those activities, and the nature of affiliated transactions by regulated carrier operations. If the Commission acts favorably on this Petition, it would continue to have ample other avenues by which to identify and gauge any one of these carriers' nonregulated activities, as necessary. Among the vehicles that would remain available for such oversight would be the Commission's annual access filings, its USOA oversight, its ARMIS and other monitoring processes, and its inherent authority under sections 4(i) and 4(j) of the Act.

What USTA is filing this Petition for, and what these carriers seek to eliminate is the seemingly-unnecessary and costly administrative burden of preparing, updating, filing and processing further their cost allocation manuals on a quarterly basis, in addition to the related burden of CAM compliance audits by the Commission and independent auditors, which triggers additional commitments of time and money. The relative costs to these carriers of the CAM and related audits is proportionately greater than it is for the other, significantly larger Tier 1 carriers. The Commission does not need this process to exercise oversight over the relevant practices of these carriers. Indeed, the fact that the Commission has now put the CAM updates of all carriers into a quarterly routine of four generic Public Notices indicates that the CAMs are generating few unique or troublesome new questions that demand continuing attention on these carriers' CAMs themselves.

The four exchange carriers who would be affected by this rulemaking (Puerto Rico Telephone Company, Rochester Telephone Corporation, Cincinnati Bell Telephone Company and Lincoln Telephone and Telegraph Company) each has annual operating

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The four exchange carriers who would be affected by this rulemaking (Puerto Rico Telephone Company, Rochester Telephone Corporation, Cincinnati Bell Telephone Company and Lincoln Telephone and Telegraph Company) each has annual operating

revenues that are far smaller than the next larger group of exchange carrier organizations. Each one of these companies also has operating territories that are far smaller in the aggregate than the territories of the next larger group of exchange carrier organizations. The access lines provided by these companies tend to be located primarily in one non-federal jurisdiction, providing opportunities to individual regulatory commissions for proportionately greater oversight and regulatory power over the carrier's overall activities. Finally, each one of these companies has only a limited number of areas identified in its CAM as a nonregulated activity in which it engages, and there has been little change of regulatory significance in the areas identified.

These characteristics themselves are responsive to some of the early concerns that were addressed by the Commission in its Common Cost proceeding. This is not an abstract analysis, but one which relates to real carriers with a documented cost allocation track record before the Commission that is sound and justifies the change requested. This Petition does not challenge the Commission's authority, as some commenters did in the Common Cost proceeding with respect to the relation of cost allocation to the Commission's Computer II activities and § 2(b)2 of the Act. See 2 FCC Rcd 6283, 6301 at ¶¶ 158-63. It seeks only the best exertion of that authority.

There are benefits that will accrue to the carriers, to their customers and to the Commission from a change in § 64.903(a). The elimination of CAM filings will allow the efforts of the companies' employees to be redirected onto paths that are more directly service-oriented, improving the efficiency of the company and ultimately providing greater benefit to customers. The Commission's experience with these companies' CAMs suggests

that the Commission's resources can be more effectively directed elsewhere, to areas that demand closer scrutiny and hands-on involvement.

It is appropriate that the Commission reevaluate the scope of its Part 64 rules at this time, in light of the Commission's own experience in reviewing CAMs and evaluating carrier compliance, and in light of the demonstrated lack of interest in commenting on any of these carriers' CAMs when they have been placed on Public Notice. No "public" has expressed a concern about one of these carriers' CAMs, or even a concern that such a CAM should continue to exist. Few public interest reasons are apparent for continuation of a rote process of updates by these carriers, when there are less burdensome and equally effective alternatives by which the Commission can obtain timely information on cost allocation compliance, affiliated transactions and diversification whenever the Commission determines there is a bona fide need for such information. The discussion above indicates that the public interest will be served by this rule change.

As noted, a copy of the rule change proposed for § 64.903(a) is attached. USTA requests prompt and favorable action on this Petition.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

BY 

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ATTACHMENT 1

PROPOSED REVISION TO § 64.903(a)

(a) Each local exchange carrier with annual operating revenues of ~~\$100 million~~ \$1 billion or more shall file with the Commission a manual containing the following information regarding its allocation of costs between regulated and nonregulated activities:

(1) (...)